



Reprinted
February 14, 2003

SENATE BILL No. 172

DIGEST OF SB 172 (Updated February 13, 2003 2:31 PM - DI 106)

Citations Affected: IC 9-30; IC 35-50; noncode.

Synopsis: Operating a vehicle while intoxicated. Makes the offense of operating a motor vehicle while intoxicated as a Class A misdemeanor or a Class D felony if at least one passenger less than 18 years of age was in the vehicle if the driver is over the age of 21. Prohibits persons who have been convicted of certain offenses involving operating a motor vehicle while intoxicated from obtaining a probationary license. Requires a person convicted of OWI with two priors to serve a mandatory 30 day jail sentence or perform 60 days of community service, and requires a court to recommend lifetime suspension of driving privileges for persons who have two convictions of operating a motor vehicle while intoxicated and causing death. Increases or establishes mandatory jail time for persons convicted of committing certain offenses involving operating a motor vehicle while intoxicated. Provides that: (1) assessments for alcohol and drug abuse; or (2) an alcohol or drug abuse program must be conducted by certain persons.

Effective: July 1, 2003.

**Young R Michael, Broden, Howard,
Simpson, Antich**

January 7, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

February 6, 2003, amended, reported favorably — Do Pass.

February 10, 2003, ordered engrossed.

February 11, 2003, engrossed. Returned to second reading.

February 13, 2003, re-read second time, amended, ordered engrossed.

SB 172—LS 6419/DI 69+



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 172

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-30-5-3, AS AMENDED BY P.L.291-2001,
2 SECTION 222, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: Sec. 3. A person who violates section 1
4 or 2 of this chapter commits a Class D felony if:

5 (1) the person has a previous conviction of operating while
6 intoxicated ~~and~~

7 (2) ~~the previous conviction of operating while intoxicated that~~
8 occurred within the five (5) years immediately preceding the
9 occurrence of the violation of section 1 or 2 of this chapter; ~~or~~

10 (2) the person:

11 (A) is at least twenty-one (21) years of age;

12 (B) violates section 1(b) or 2(b) of this chapter; and

13 (C) operated a vehicle with at least one (1) passenger less
14 than eighteen (18) years of age.

15 SECTION 2. IC 9-30-5-10 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) In addition to a
17 criminal penalty imposed for an offense under this chapter or

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IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section.

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. ~~The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(e) If the conviction under consideration by the court is for an offense under section 1(b) of this chapter, the court shall recommend the suspension of the person's driving privileges for at

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least one hundred eighty (180) days but not more than two (2) years.

(f) If:

- (1) the conviction under consideration by the court is for an offense under section 1(a), 1(c), or 2 of this chapter; and
- (2) the court determines that the person was at least twenty-one (21) years of age and operated a vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle;

the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years.

(g) If:

- (1) the conviction under consideration by the court is for an offense under section (1)(b) of this chapter; and
- (2) the court determines that the person operated a vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle;

the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years.

(h) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

⊕ (i) **Subject to this section**, if the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 3. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter the court shall:

(1) order:

- (A) that the person be imprisoned for at least five (5) days; ~~or~~
and
- (B) **that** the person ~~to~~ perform at least thirty (30) days of community restitution or service; and



(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ~~ten (10)~~ **thirty (30)** days; or

(B) the person to perform at least sixty (60) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order that the person be imprisoned for at least three (3) days; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug program;

if the person is convicted of an offense under section 1(b) of this chapter.

(d) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order that the person be imprisoned for at least three (3) days; and

(2) order the person to:

(A) receive an assessment of the person's degree of alcohol and drug abuse; and

(B) if appropriate, successfully complete an alcohol or drug program;

if the person is at least twenty-one (21) years of age and is convicted of an offense under section 1(a), 1(c), or 2 of this chapter with at least one (1) passenger less than eighteen (18) years of age

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1 in the vehicle.

2 (e) In addition to any criminal penalty imposed for an offense
3 under this chapter, the court shall order the person to:

4 (1) receive an assessment of the person's degree of alcohol and
5 drug abuse; and

6 (2) if appropriate, successfully complete an alcohol or drug
7 program;

8 if the person is convicted of an offense under section 5 of this
9 chapter.

10 (f) An assessment for alcohol and drug abuse required under
11 this section must be conducted by:

12 (1) a court established alcohol and drug services program
13 certified under IC 12-23-14;

14 (2) a circuit court alcohol abuse deterrent program
15 established under IC 9-30-9; or

16 (3) a drug court certified under IC 12-23-14.5.

17 In a county that does not have a program described in subdivision
18 (1), (2), or (3), the assessment must be conducted by an addiction
19 services treatment provider certified by the division of mental
20 health and addiction under IC 12-23.

21 (g) A court ordering a person to complete an alcohol or drug
22 abuse program under this section must determine that the
23 program is:

24 (1) certified under IC 12-23-14 or IC 12-23-14.5; or

25 (2) authorized under IC 9-30-9.

26 In a county that does not have a program described in subdivision
27 (1) or (2), the program must be conducted by an addiction services
28 treatment provider certified by the division of mental health and
29 addiction under IC 12-23.

30 ~~(e)~~ (h) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence
31 imposed under this section may not be suspended. The court may
32 require that the person serve the term of imprisonment in an
33 appropriate facility at whatever time or intervals (consecutive or
34 intermittent) determined appropriate by the court. However:

35 (1) at least forty-eight (48) hours of the sentence must be served
36 consecutively; and

37 (2) **except as provided in subsection (e)**, the entire sentence
38 must be served within six (6) months after the date of sentencing.

39 ~~(d)~~ (i) Notwithstanding IC 35-50-6, a person does not earn credit
40 time while serving a sentence imposed under this section.

41 SECTION 4. IC 9-30-10-5 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) If it appears from

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the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2),** ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has two (2) or more violations under section 4(a)(4) through section 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter.

SECTION 5. IC 35-50-2-2, AS AMENDED BY P.L.116-2002, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum

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1 sentence for the crime only if the court orders home detention
 2 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 3 sentence specified for the crime under this chapter.

4 (4) The felony committed was:

- 5 (A) murder (IC 35-42-1-1);
- 6 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
- 7 causing death;
- 8 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 9 (D) kidnapping (IC 35-42-3-2);
- 10 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 11 (F) rape (IC 35-42-4-1) as a Class A felony;
- 12 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 13 felony;
- 14 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 15 felony;
- 16 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 17 with a deadly weapon;
- 18 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 19 injury;
- 20 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 21 or with a deadly weapon;
- 22 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 23 weapon;
- 24 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 25 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 26 (O) dealing in cocaine, a narcotic drug, or methamphetamine
- 27 (IC 35-48-4-1) if the court finds the person possessed a firearm
- 28 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 29 person delivered or intended to deliver to a person under
- 30 eighteen (18) years of age at least three (3) years junior to the
- 31 person and was on a school bus or within one thousand (1,000)
- 32 feet of:
 - 33 (i) school property;
 - 34 (ii) a public park;
 - 35 (iii) a family housing complex; or
 - 36 (iv) a youth program center;
- 37 (P) dealing in a schedule I, II, or III controlled substance
- 38 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 39 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 40 person delivered or intended to deliver to a person under
- 41 eighteen (18) years of age at least three (3) years junior to the
- 42 person and was on a school bus or within one thousand (1,000)

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1 feet of:

- 2 (i) school property;
- 3 (ii) a public park;
- 4 (iii) a family housing complex; or
- 5 (iv) a youth program center;

6 (Q) an offense under IC 9-30-5 (operating a vehicle while
7 intoxicated) and the person who committed the offense has
8 accumulated at least two (2) prior unrelated convictions under
9 IC 9-30-5; ~~or~~

10 **(R) an offense under IC 9-30-5-5 (operating a vehicle while**
11 **intoxicated causing death); or**

12 **(S) aggravated battery (IC 35-42-2-1.5).**

13 (c) Except as provided in subsection (e), whenever the court
14 suspends a sentence for a felony, it shall place the person on probation
15 under IC 35-38-2 for a fixed period to end not later than the date that
16 the maximum sentence that may be imposed for the felony will expire.

17 (d) The minimum sentence for a person convicted of voluntary
18 manslaughter may not be suspended unless the court finds at the
19 sentencing hearing that the crime was not committed by means of a
20 deadly weapon.

21 (e) Whenever the court suspends that part of an offender's (as
22 defined in IC 5-2-12-4) sentence that is suspendible under subsection
23 (b), the court shall place the offender on probation under IC 35-38-2 for
24 not more than ten (10) years.

25 (f) An additional term of imprisonment imposed under
26 IC 35-50-2-11 may not be suspended.

27 (g) A term of imprisonment imposed under IC 35-47-10-6 or
28 IC 35-47-10-7 may not be suspended if the commission of the offense
29 was knowing or intentional.

30 (h) A term of imprisonment imposed for an offense under
31 IC 35-48-4-6(b)(1)(B) may not be suspended.

32 **SECTION 6. [EFFECTIVE JULY 1, 2003] IC 9-30-5-3,**
33 **IC 9-30-5-10, IC 9-30-5-15, and IC 35-50-2-2, all as amended by**
34 **this act, apply only if the last offense was committed after June 30,**
35 **2003.**

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SENATE MOTION

Mr. President: I move that Senator Broden be added as second author and Senator Howard be added as coauthor of Senate Bill 172.

YOUNG R MICHAEL

SENATE MOTION

Mr. President: I move that Senator Simpson be added as coauthor of Senate Bill 172.

YOUNG R MICHAEL

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 172, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 10.

Page 2, line 20, after "person" insert ":

(A) is at least twenty-one (21) years of age;

(B)".

Page 2, line 20, delete "chapter" and insert "**chapter;**".

Page 2, line 21, before "operated" begin a new line double block indented and insert:

"(C)".

Page 3, line 31, after "person" insert "**was at least twenty-one (21) years of age and**".

Page 3, line 37, after "(g)" insert:

"If:

(1) the conviction under consideration by the court is for an offense under section (1)(b) of this chapter; and

(2) the court determines that the person operated a vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle;

the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years.

(h)".

Page 3, reset in roman line 40.

Page 3, line 41, reset in roman "(3)".

Page 3, line 41, delete "(2)".

Page 3, line 42, reset in roman "(4)".

Page 3, line 42, delete "(3)".

Page 4, delete lines 3 through 12.

Page 4, line 13, delete "(j)" and insert "**(i)**".

Page 4, line 35, delete ":".

Page 4, strike line 36.

Page 4, line 37, strike "that the person be imprisoned for at least".

Page 4, line 37, delete "ninety".

Page 4, line 38, delete "(90)".

Page 4, line 38, strike "days;".

Page 4, line 40, strike "and".

Page 4, line 41, strike "(2)".

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Page 5, line 24, after "is" insert "**at least twenty-one (21) years of age and is**".

Page 5, line 28, delete ":".

Page 5, delete lines 29 through 30.

Page 5, line 31, delete "(2)".

Page 5, run in lines 28 and 31.

Page 5, delete lines 32 through 35, begin a new line block indented and insert:

"(1) receive an assessment of the person's degree of alcohol and drug abuse; and

(2) if appropriate, successfully complete an alcohol or drug program;".

Page 5, line 41, delete "or".

Page 6, line 1, delete "IC 9-30-9." and insert "**IC 9-30-9; or**

(3) a drug court certified under IC 12-23-14.5."

Page 6, line 3, after "(1)" insert ",".

Page 6, line 3, delete "or".

Page 6, line 3, after "(2)," insert "**or (3),**".

Page 6, line 9, delete "IC 12-23-14;" and insert "**IC 12-23-14 or IC 12-23-14.5;**".

Page 6, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 5. IC 9-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2),** ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has two (2) or more violations under section 4(a)(4) through section 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial

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review of the person's suspension under this chapter."

Page 8, line 15, delete "operating a vehicle while intoxicated with at least one" and insert "**an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death); or**".

Page 8, delete lines 16 through 17.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 172 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 5, Nays 4.

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SENATE MOTION

Mr. President: I move that Senator Antich be added as coauthor of Engrossed Senate Bill 172.

YOUNG R MICHAEL

SENATE MOTION

Mr. President: I move that Engrossed Senate Bill 172, which is eligible for third reading, be returned to second reading for purposes of amendment.

YOUNG R MICHAEL

SENATE MOTION

Mr. President: I move that Senate Bill 172 be amended to read as follows:

Page 4, line 9, after "shall" insert ":",

Page 4, reset in roman line 10.

Page 4, line 10, after "order" insert ":",

Page 4, line 11, reset in roman "(A) that the person be imprisoned for at least".

Page 4, line 11, after "(10)" insert "**thirty (30)**".

Page 4, line 11, reset in roman "days; or".

Page 4, reset in roman lines 12 through 13.

Page 4, line 14, reset in roman "(2)".

(Reference is to SB 172 as printed February 7, 2003.)

YOUNG R MICHAEL

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